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File
Pinal Lake
Concerning

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT ISSUED BY)
PEND OREILLE COUNTY TO ROY R.)
REDNOUR)
MONTE N. MORTENSEN,)
Appellant,)
v.)
PEND OREILLE COUNTY and ROY)
R. REDNOUR,)
Respondents.)

SHB No. 77-9

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

PER W. A. GISSBERG:

This matter was heard by the Shorelines Hearings Board, W. A. Gissberg
Chairman, Robert E. Beaty, William A. Johnson, Dave J. Mooney and Chris
Smith on June 1, 1977 at Newport, Washington. David Akana presided.

Appellant and respondent Roy R. Rednour appeared pro se. Pend Oreille
County appeared by and through its Deputy Prosecuting Attorney James Roche

Having heard the testimony and examined the exhibits and being

1 fully advised, the Board makes and enters the following

2 FINDINGS OF FACT

3 I

4 Roy R. Rednour is the owner of 31 acres of land on which his home
5 is situated near and overlooking but outside of the shorelines of
6 statewide significance of the Pend Oreille River a short distance
7 downstream from Usk, Washington.

8 He also owns either¹ the fee title to or an easement over, a
9 40-foot wide strip of land leading from a county road to the waters
10 of an unnamed slough (tributary to the river) and thence across the slough
11 and a dike to the river itself. His purpose in excepting the 40-foot
12 strip from a prior conveyance of land immediately adjacent to it was to
13 provide him with access to the waters of the river. However, in order
14 for him to utilize the access strip for launching recreation power
15 boats at the river, it would be necessary to construct a crossing
16 at the slough.² Accordingly, Rednour applied for and the county granted
17 him a substantial development permit to place approximately 115 cubic
18 yards of fill dirt across the width of the slough at a point where the
19 access strip and the slough intersect. The permit also authorizes the
20 installation of two 18" diameter culvert pipes under the fill and
21 parallel to the slough through which its waters could flow to the river.

22
23 1. The nature of the property right is immaterial.

24 2. The strip separates land within the Kalispell Indian
25 Reservation and the acreage owned by appellant. The slough crosses
26 the land of appellant, Rednour and the Kalispell Indians.

27 FINAL FINDINGS OF FACT,
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1 II

2 Appellant is aggrieved because the fill would effectively block
3 him from navigating by skiff from the river, up the slough to his
4 property. Both the properties of appellant and the Rednour strip front
5 on the river. The depth of the waters of the slough is greatest at
6 its mouth at the river but it quickly shallows as it leaves the river
7 and dries up entirely not far upstream from the proposed fill.

8 III

9 The depth of the water in the slough is not materially affected, if
10 at all, by surface water drainage but rather by the height of the
11 adjacent river. As the river rises and falls so does the slough. The
12 level of the river water has a 24 hour variation of as much as two or
13 three feet and an annual variation of as much as 20 feet between high
14 and low water conditions. While the slough is absolutely empty of
15 water during certain times of the year and has little flow in it during
16 the rest of time, the fact remains that during the months of May and
17 June it is of sufficient depth to navigate a skiff from the mouth to a
18 point upstream from the proposed fill, a total distance of roughly
19 600 feet as estimated by the Board's view of the site.

20 IV

21 Rednour has procured a hydraulic permit from the Department of Game
22 which approves the project. There are many varieties of fish in the
23 river, some of which enter the slough during the periods of high
24 water, but the slough does not constitute a good habitat for the river
25 fish because of the limited depth and absence of cover. While there
26 is aquatic bird life at the site, the proposed fill would have an

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1 insignificant effect upon wildlife, fish and waterfowl.

2 V

3 The county carefully complied with the provisions of the State
4 Environmental Policy Act and its Council on Environmental Policy
5 Guidelines and correctly concluded that the proposed development would
6 not have significant adverse effects upon the environment.

7 VI

8 Nonetheless, the site is within an area which has been designated
9 by the approved county shoreline master program as Conservancy. The
10 master program³ policy statement provides, with respect to landfills,
11 that:

12 . . .
13 12. A. Generally, filling or depositing of material on
14 shoreland should be discouraged, but each case
shall be considered on its own merit.⁴

15 but that:

16 . . .
17 13.20 Dredging operations or landfills shall be
18 prohibited on conservancy shorelines, except
19 where they do not substantially change the
20 character of that environment and where they
are a necessary accessory to a project which
is clearly dependent on a location near or
adjacent to a body of water.⁵ (Emphasis
added.)

21 The proposed fill is not accessory to any other "project, let alone
22

23 3. Exhibit R-20.

24 4. Exhibit R-20, page 17.

25 5. Exhibit R-20, page 36.

26

27 FINAL FINDINGS OF FACT,
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1 a project which is clearly dependent on a location near or adjacent to
2 a body of water.

3 VII

4 Any Conclusion of Law hereinafter stated which may be deemed
5 a Finding of Fact is hereby adopted as such.

6 From these Findings, the Shorelines Hearings Board comes to these

7 CONCLUSIONS OF LAW

8 I

9 In order that a substantial development permit may be upheld by
10 this Board, the law requires that it be consistent with the provisions
11 of the Shoreline Management Act and the locally approved master program.

12 In the instant case, the permit is clearly inconsistent with
13 the master program shoreline use regulations pertaining to Landfill and
14 Dredging in a Conservancy Environment.⁶

15 Landfills in the conservancy shoreline are prohibited by the local
16 master program in all instances and situations except where the landfill:
17 (1) does not substantially change the character of that environment,
18 and (2) the fill is a "necessary accessory to a project which is clearly
19 dependent on a location near or adjacent to a body of water". Since the
20 proposed fill is not a necessary accessory "to a project which is
21 clearly dependent on a location near or adjacent to a body of water",
22 the landfill does not come within the stated exceptions to the
23 prohibition. As we have found, (Finding of Fact VI) the fill is
24 not accessory to any other project dependent on a shoreline use.

6. Exhibit R-20, page 36, section 13.20

1 On the contrary, the fill is the project.

2 II

3 The permit should be vacated.

4 III

5 Any Finding of Fact which should be deemed a Conclusion of Law
6 is hereby adopted as such.

7 From these Conclusions, the Board issues this

8 ORDER

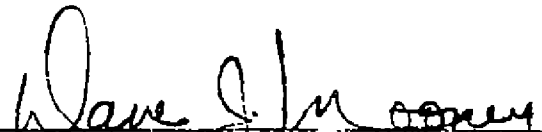
9 The shoreline substantial development permit is vacated.

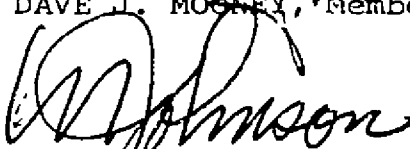
10 DATED this 17th day of June, 1977.

11 SHORELINES HEARINGS BOARD

12 
13 W. A. GISSBERG, Chairman
14

15
16 ROBERT E. BEATY, Member

17 
18 DAVE J. MOONEY, Member
19

20 
21 WILLIAM A. JOHNSON, Member
22

23 
24 CHRIS SMITH, Member
25

26 FINAL FINDINGS OF FACT,
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1 BEATY, ROBERT E. (concurring opinion)--Although I concur in the
2 result of this Order I would:

3 1. Add the following language to Finding of Fact I:

4 To assure the uninterrupted flow of water at
5 periods when the slough is especially shallow
6 one of the drains would have to be installed
7 on the bed of the slough. It appears that
8 steps beyond merely filling the slough would
9 have to be taken to prevent the culvert from
10 sinking into the mire underlying the fill in
11 question.

12 2. In Finding of Fact IV, page 3, line 25, after the word and
13 punctuation "cover.", strike the next sentence and insert in lieu
14 thereof:

15 There are presently a variety of animals at the
16 site including waterfowl of several varieties,
17 beaver, and other marsh dwellers.

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ROBERT E. BEATY, Member

3 FINAL FINDINGS OF FACT,
4 CONCLUSIONS OF LAW
5
6
7 AND ORDER